In this case the document was not a licence but a service tenancy. It contains words saying that it is not a tenancy, but they must be ignored. The landlord is not entitled to possession except in accordance with the Rent Acts."

The principles propounded are equally applicable here.

On the evidence before me I find (1) that the plaintiffs were in possession of the keys of the warehouse, (2) that they had sole control of the letting of space within the warehouse and to whomsoever they chose and (3) that tney had exclusive possession of the warehouse as from January 1, 1971.

On the disputed question of whether a tenancy was created or licence to occupy given in regard to the warehouse the vital evidence in my view is that of Seow Khoy Shiou (PW2) for the plaintiffs and Lee Kim Soon (DW2) for the defendants. As between these two witnesses I accept the evidence of the former. I found him to be a reliable witness. On the contrary I found Lee Kim Soon to be an unsatisfactory witness. I was satisfied on their evidence that prior to the plaintiffs moving into the warehouse both intended and agreed that the plaintiffs were to have the warehouse on a long term basis at a rental of $3,000 per mensem and that the form of words used in the immediate and subsequent documentation relating to the warehouse were in so far as the defendants were concerned solely for the purpose of getting over and trying to frustrate the provisions of the Rent Act. I therefore hold that as from January 1, 1971 the plaintiffs were tenants of the warehouse paying therefor to the defendants the agreed rental of $3,000 per mensem in advance.

On the question of whether on January 1, 1971 the standard rent of the warehouse was $2,000 per mensem the plaintiffs on the evidence they have been able to adduce on this matter have not satisfied me that this was so. I therefore hold that on the evidence now before me that the standard rental of the warehouse is $3,000 per mensem and that in consequence the raising of the rent from $3,000 per mensem to $5,000 per mensem as from August 1, 1978 was contrary to the provisions of the Rent Act and that all overpayments made by the plaintiffs to the defendants to date over and above the $3,000 per mensem are recoverable from the defendants by virtue of section 3 of the Rent Act. Consequent on these findings the defendants counterclaim for the recovery of the warehouse must necessarily be dismissed with costs.

I enter judgment for the plaintiffs for $104,000, being the sum agreed by the parties as having been overpaid and costs.

Order accordingly.

Solicitors: *L.A.J. Smith; Shook Lin & Bok.*

MATHEW BOHMAN v. JURONG TOWN CORPORATION

[A.C.J. (Choor Singh J.) October 2, 1980]
[Singapore — Civil Appeal No. 69 of 1980]

Landlord and Tenant — Claim for negligence against landlord — Tenant injured by fall over steps at premises — Duty of landlord to tenant.

Tort — Negligence — Tenant injured by fall over steps at premises — Whether landlord negligent — Factories Act (Cap. 123), s. 33(2) & (4) — Occupiers' Liability Act, 1957 (U.K.), s. 4(1).

Interpretation — "Steps" and "staircase" distinguished — Factories Act (Cap. 123), s. 33(1).

The appellant in this case occupied premises at Redhill Industrial Estate, Singapore as a tenant of the respondents. The appellant's unit was on the second floor of the buildings. There was a common loading platform on the ground floor of the building. The platform was raised a few feet from the ground level so that when a lorry was backed against it, the floor boards of the lorry matched the level of the platform. This was meant to facilitate the loading of goods off and on the lorry. The platform had a short flight of steps at one end.

On June 21, 1976 the appellant was standing on the edge of the platform, in a position immediately adjacent to the steps, and supervising the loading of goods into a lorry which had backed against the platform when he inadvertently stepped back on to the steps. He suffered a fall and sustained injuries. He claimed damages for personal injuries against the respondents. His claim for breach of statutory duty was dismissed by the learned District Judge. He appealed.

Held, dismissing the appeal: (1) the provisions of section 33(2) and (4) of the Factories Act on which the appellant relied had no application to the facts of this case; the steps were not an opening in the floor nor were they a staircase within the meaning of the sub-section which clearly contemplates a flight of steps leading from one storey to another storey;

(2) a landlord owes no duty to his tenant save and except to carry out repairs if he has so agreed at the time of the letting;

(3) the accident in this case was not due to disrepair of the common loading platform;

(4) there was no danger at all in the use of the platform because it was not in a dangerous state; the accident occurred due to a negligent act on the part of the appellant.

Case referred to:-

(1) *Cavalier* v. *Pope* [1906] A.C. 428.

CIVIL APPEAL.

Kan Ting Chin for the appellant.

Sachi Saurajen for the respondents.

Cur. Adv. Vult.

Choor Singh J.: The appellant Mathew Bohman occupies premises No. 3811D Jalan Bukit Merah, Redhill Industrial Estate, Singapore as tenant of the Jurong Town Corporation, the respondents in this appeal. The said premises are a factory unit within a flatted factory block known as Redhill Industrial Estate Block No. 1. There are 35 such units in this block. The appellant's unit is on the second floor of the building. He manufactures festive decorations and craft accessories. There is a common loading platform or loading bay on the ground floor of the building. This platform is raised a few feet from the ground level so that when a lorry is backed against it, the floor boards of the lorry match the level of the platform and this facilitates the loading of goods off and on the lorry. The platform has a short flight of steps

at one end as shown in photograph Exhibit AB17.

On June 21, 1976, the appellant was standing on the edge of the platform, in a position immediately adjacent to the steps, and supervising the loading of goods into a lorry which had backed against the platform when he inadvertently stepped back on to the steps as shown in photograph Exhibit No. P13. He suffered a fall and sustained injuries. He claimed damages for personal injuries on the following grounds:

(a) Breach of statutory duty on the part of the respondents.

(b) Alternatively, negligence of the respondents, their servants and agents.

(c) Alternatively, breach of contract.

At the hearing of the claim before the District Court, special damages were agreed at $144 and general damages at $6,000. Evidence was called by both parties and the issue of liability was argued. The District Judge dismissed the appellant's claim with costs.

On appeal before me, it was contended on behalf of the appellant that the premises fell within the scope of the Factories Act and that the respondents as landlords and owners contravened sections 33(2) and (4) of the Factories Act which provide as follows: —

"33(2) All openings in floors shall be securely fenced except in so far as the nature of the work renders such fencing impracticable.

33(4) For every staircase in a building or affording a means of exit from a building, a substantial handrail shall be provided and maintained, which, if the staircase has an open side, shall be on that side, and, in the case of a staircase having two open sides, such a handrail shall be provided and maintained on both sides. Any open side of a staircase shall also be guarded by the provision and maintenance of a lower rail or other effective means."

In my judgment the provisions of subsections (2) and (4) of section 33 on which the appellant relied, had no application to the facts of this case. The steps were not an opening in the floor nor were they a staircase within the meaning of the subsection which in my opinion clearly contemplates a flight of steps leading from one storey to another storey. Steps are normally provided to overcome different levels on the same floor and that in my opinion is the sense in which the expression is used in the Act because in subsection 1) of section 33 both expressions, "steps" and "staircase" appear side by side and the Legislature has by implication clearly ascribed different meanings to them. Accordingly "steps" cannot include or mean a "staircase".

Next, it was submitted, that the respondents were liable because they were in breach of a duty to take care imposed by common law. It was contended that the steps were not only unsafe but also dangerous and that there should have been a kerb or handrail erected on their open side to make them safe.

In my opinion the claim in negligence was also not well founded. A landlord owes no duty to his tenant save and except to carry out repairs if he has so agreed at the time of the letting. See the decision of the House of Lords in *Cavalier* v. *Pope*,[1] which is still good law in Singapore although it has been reversed in England by section 4(1) of the Occupiers' Liability Act, 1957. The accident in this case was not due to disrepair of the common loading platform. The platform was at the time of the accident in the same state as when the premises were first let to the appellant. There was no hidden defect or concealed danger in the platform. The appellant had seen and used the platform for five years prior to this accident and if there was any danger in the use of the platform the appellant knew that danger very well. He had knowledge or notice of the existence of the so called danger through which he has suffered. "If one knows of the danger and runs the risk he has no cause of action" *per* Lord Atkinson in *Cavalier* v. *Pope, supra.* In my judgment, there was no danger at all in the use of the platform because it was not in a dangerous state. The accident occurred due to a negligent act on the part of the appellant. There was no evidence of negligence on the part of the respondents. The claim in negligence failed and was rejected.

The last ground relied upon by the appellant was "breach of contract". The appellant relied on clause 3(2) of the Tenancy Agreement which reads: —

"The landlord hereby covenants with the tenant as follows — To keep the exterior and roof of the Building around the lift entrances corridors passages staircase lavatories water closets and other conveniences intended for the use of the Tenant at all times in complete repair and in proper sanitary and clean condition and fit for comfortable use and enjoyment by the Tenant."

I could not see anything in this clause which could be of assistance to the appellant in his claim.

The evidence showed quite clearly and it was admitted by the appellant, that the accident was due to the appellant stepping backwards without having first ascertained that it was safe to do. The plaintiff ought to have known that his presence on the loading platform in a position immediately adjacent to the steps involved a risk. The appellant knew that the steps were there. The appellant admitted under cross-examination that he did not realise that he was only a few inches from the edge. If he had looked behind to his left in the direction of the steps which he knew were there, the accident would not have occurred. In my judgment the negligence of the appellant was the sole cause of the accident and the respondents were entirely free of blame. The appeal was accordingly dismissed with costs.

Appeal dismissed.

Solicitors: *Hilborne & Co.; Drew & Napier.*